

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
LICENSE NO.493863 and MERCHANT MARINER'S DOCUMENT Z 096-24-2273
Issued to: Kenneth Surat Singh

DECISION OF THE VICE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2305

Kenneth Surat Singh

This appeal was taken in accordance with Title 46 United States Code 239(g) and 46 CFR 5.30-1.

By order dated 25 July, 1880, an Administrative Law Judge of the United States Coast Guard at Boston, Massachusetts suspended Appellant's license and seaman's document for 1 month on 12 months' probation, upon finding him guilty of misconduct and negligence.

The specifications found proved allege that while serving as Chief Engineer on board the United States T/V ALLEGIANCE, O.N.27866 under authority of the document and license above captioned, on or about 19 December 1979, Appellant: (1) Wrongfully failed to report a repair to a cargo pump, and (2) was negligent in maintaining and repairing the vessel's machinery and equipment.

The hearing was held at Melville, Rhode Island and Boston, Massachusetts on 28 January, II and 26 February, II March, 16 April and II June 1980.

The hearing was held in joinder with those of John D. Gaboury, Master of the vessel, and Timothy Fales, the Chief Mate.

At the hearing, Appellant was represented by professional counsel and entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence 17 exhibits and the testimony of 5 witnesses.

In defense, Appellant and the other respondents offered in evidence 18 exhibits and the testimony of 4 witnesses in addition to their own testimony.

The record of the hearing consists of:860 pages of transcript; 120 pages of exhibits; and a 63 page Decision and Order.

After the end of the hearing, the Administrative Law Judge rendered the written Decision and Order in which he concluded that

each charge had been proved, and each specification thereunder had been "proved in part by substantial evidence of a reliable and probative character." The Administrative Law Judge did not state which portions of the specifications he found proved by substantial evidence of a reliable and probative character. He then entered an order suspending all licenses issued to Appellant for a period of 1 month on 12 months' probation.

The entire decision was served on 28 July 1980. Appeal was timely filed and perfected on 21 August 1980.

FINDINGS OF FACT

On 19 December 1979, Appellant was serving as Chief Engineer on board the United States T/V ALLEGIANCE and acting under the authority of his license. While the vessel was in port in Braintree, Massachusetts, on that date, it was boarded by U.S. Coast Guard marine inspectors who found various deficiencies in the vessel's cargo handling equipment. These deficiencies led to charges against the Master, Chief Mate, and Appellant.

BASES OF APPEAL

Appellant asserts that the Administrative Law Judge's finding that each specification was proved in part is insufficient.

APPEARANCE: John E. Droeger of Hall, Henry, Oliver and McReavy, 100 Bush St., San Francisco, California.

OPINION

The finding that each specification was "proved in part by substantial evidence of a reliable and probative character" is not sufficient. The Administrative Law Judge does not state in his decision which portions of the specifications were so proved or whether the remaining portions were not proved or were proved with evidence of a less reliable character.

A specification may properly be found "proved in part." 46 CFR 5.20-155(b). When this is done, however, the Administrative Law Judge must state clearly which portions are proved and which are not. Commandant Appeal Decision 2195 (FORREST). In addition, "Findings must be supported by substantial evidence of a reliable and probative character." 46 CFR 5.20-95(b). Evidence of a lesser stature is not sufficient.

CONCLUSION

The findings of the Administrative Law Judge with respect to

Appellant are insufficient and must be set aside. Due to the time which has passed since the alleged offenses and the hearing, and the somewhat doubtful quality of the evidence of Appellant's role in the offenses, a remand for clarification of the findings would only serve to prolong this matter and would serve no useful purpose.

ORDER

The order of the Administrative Law Judge dated at Boston, Massachusetts on 25 July 1980 is VACATED in so far as it applies to Appellant, Kenneth Surat Singh, the findings are set aside, and the charges dismissed.

B.L STABILE
Vice Admiral, U.S. Coast Guard
VICE COMMANDANT

Signed at Washington D.C., this 9th day of May 1983.